NO. 4410

In the United States
Circuit Court of Appeals
For the Ninth Circuit

OLD COLONY TRUST COMPANY, a corporation, THE FIRST NATIONAL BANK OF BOSTON, a National Banking Association, NATIONAL BANK OF COMMERCE IN NEW YORK, a National Banking Association, THE FIRST NATIONAL BANK IN ST. LOUIS, a National Banking Association, NATIONAL SHAWMUT BANK OF BOSTON, a National Banking Association, NATIONAL CITY BANK, a National Banking Association, and FIRST NATIONAL BANK OF CHICAGO, a National Banking Association,

Appellants,

VS.

UNION LAND & CATTLE COMPANY, a corporation, and W. T. SMITH, Receiver of said Union Land & Cattle Company, Under and By Virtue of that Certain Order Given and made by the District Court for the District of Nevada, on July 28, 1920, SILVERIA GARAT, W. T. HITT, EMMA McLAUGHLIN, HENRIETTA MOFFAT, MAUD B. CLEMONS, FRANCES C. RICKEY, W. A. DILL, W. H. FRAZER, ELIZABETH SHARP, MRS. ALOYSIUS DAVEY, and J. W. DORSEY,

Appellees.

Brief for Appellees

S. W. BELFORD,
GEO. S. BROWN,
J. W. DORSEY
W. E. CASHMAN
Attorneys for Appellees.

TABLE OF CONTENTS

TABLE OF CASES

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STATEMENT OF FACTS

The Spanish Ranch comprises one of the principal divisions, or units, of the property of the Union Land & Cattle Company. It consists of thousands of acres

of land, and attached to it have been very large herds of cattle and flocks of sheep. The Union Land & Cattle Company is a great livestock concern. It is engaged exclusively and very extensively in raising and growing sheep and cattle for the market, and its far-flung possessions extend over the states of California and Nevada. In order to properly graze its livestock, it owns ranches in various parts of these states, which are used as bases, or central stations, for the care of the sheep and cattle, and which are also used as very important and essential strategical positions from which the public domain is utilized as feeding grounds.

We think the court is entitled to avail itself of its general knowledge of the manner and methods by which the livestock business is conducted at the present time in the public land states of the West. Sheep and cattle are grazed over an immense area, miles in extent, and only at fixed periods of the year are they brought to the central ranches. The grazing lands are the property of the United States, while the ranches themselves are important and valuable, in a large measure, on account of their relation to, and their control of, the adjacent public grazing land. The sheep and cattle are not and cannot be kept on the ranches themselves, except during the time when they are fed for the market, nor can they be confined to the ranch properties.

This condition has resulted in the location of ranch properties at convenient points to the grazing lands, and in connection with a water supply.

The Lesher ranch, the purchase of which is involved in this appeal, is merely illustrative of such a condition. It is not peculiar to the property of the Union Land & Cattle Company, nor is it in any sense an exceptional undertaking.

The Lesher ranch is located in the middle or heart of the range used in connection with the Spanish Ranch. It consists of approximately 1280 acres, and the range in relation to which it was located was the only valuable range which was left for, or available to, the Spanish Ranch property. So, **in June, 1922,** a contract was made for the purchase of this property, for the benefit of the Union Land & Cattle Company. The contract provided, generally speaking, for the purchase price of $10,000, which sum was payable as follows:

$1,000.00 on June 23, 1922;
$1,000.00 on December 1, 1922;
$4,000.00 on June 21, 1923; and
$4,000.00 on June 21, 1924,

deferred payments to bear interest at the rate of six (6%) per cent per annum. It provided, further, for the forfeiture of the contract, if the payments were not made at the dates specified, and, also, for a for-

feiture of all payments made prior to a default. Upon the making of the contract, possession was taken of the ranch, and it has been used ever since by the Receiver in the operation of the property. Payments were made at the dates specified in the contract, and $6,000.00 had been paid on the purchase price of the ranch by June 21, 1923, without any apparent objection from any source.

REASON FOR PURCHASE

The evidence before the District Court seems to us to disclose very persuasive reasons for the purchase of this property. They are:

First. The contract for the purchase was made at a time when the Receiver, with the full concurrence of all the creditors, including those now objecting, was operating the property as a going concern, under the original order of his appointment, and before an active policy of liquidation was inaugurated, following the failure of the Creditors' Agreement in 1923;

Second. The purchase was made as a measure necessary for the protection of the entire Spanish Ranch.

Third. The property was so located and occupied such a position with reference to the range lands,

that, if it fell into other hands, the whole range for the sheep and cattle of the Spanish Ranch might have been seriously endangered;

Fourth. Livestock interests, other than the Union Land & Cattle Company, and competitive with the Union Land & Cattle Company for the use of the range, would have secured access through the purchase of this property to the heart of the Spanish Ranch range, "which was nearly the only valuable range by itself wich the Spanish Ranch had left."

Fifth. The purchase price for the property, in and of itself, was reasonable, aside from its key position.

In addition to these matters, the court must bear in mind the fact that the failure to make the payment of $4,000.00, on he 23d of June, 1924, would have meant the loss to the receivership of the ranch itself and the $6,000.00 theretofore paid, because the evidence showed that, in all probability, the Lesher property could at any time be sold for the full amount of the purchase price.

The Receiver filed his petition for authority to make the last payment of $4,000.00, due under the contract, and for an order approving the payments theretofore made under the contract. Notice of the hearing of these petitions was served upon all the

creditors and all other parties in interest. A hearing was held at the time fixed in the notice, and the District Court after full hearing, made an order:

1st. Directing the payment of the amount still due under the contract; and

2nd. Confirming and approving the payments which had already been made.

No objection was made to the order of the District Court, except by the group of seven Eastern banks —neither the First National Bank of San Francisco, nor the First Federal Trust Company objected—a group which has appeared in all the other proceedings before this court. The appeal to this court from the order of authorization and approval is prosecuted by this group of seven Eastern banks.

OUTLINE OF ARGUMENT

1. The contract for the purchase of the Lesher property was a proper contract in and of itself, and it was made at a time when the property was operated as a going concern by the Receiver, with the full concurrence and approval of all the creditors, including those now objecting.

2 The purchase of the property was necessary and proper, not only on account of the property it-

self, but because of the key position it occupied with regard to the control of the range used in connection with the Spanish Ranch.

3. Payments aggregating $6,000.00 had been made by the Receiver, without objection, these payments appearing in his accounts, which had been approved by the court after notice to the creditors.

4. The orders made by Judge Farrington were within his jurisdiction to make. They were made pursuant to a sound discretion vested in him. That discretion was properly exercised.

5. The inquiry of this court should be confined to the determination of the question whether, under the circumstances of this case, the discretion of the District Court had been abused.

6. There is no abuse of discretion here, and the orders should be affirmed.

BRIEF OF ARGUMENT

It seems to us that little need be added to what has already been set forth in the statement of facts. The testimony to which we desire the court to refer does not leave the propriety or wisdom of these orders in doubt. It establishes beyond dispute the wise character of the contract, and the necessity of

the purchase.

Mr. Smith, the Receiver, testified in substance as follows:

> "This Lesher matter was brought to my attention by the foreman, Mr. Calligan, soon after I became Receiver of the Union Land & Cattle Company. * * * * It is on the north side of Tuscarora Mountain, in the middle of our range. * * * Mr. Calligan brought this matter to my attention in the beginning. * * * I thought it was important for the Union Land & Cattle Company, or the Spanish Ranch division, to purchase this land from Mr. Lesher. A holding like this, in the heart of our range would be very injurious to the Union Land & Cattle Company, and would permit Mr. Taylor, if he should buy it, to get a holding there that would, in a way, give them access for their cattle and sheep to the heart of this range, **which was really the only valuable range by itself that we had left.** * * * We felt it was vitally important that we should acquire possession of this in some way, to prevent anyone else from getting in there.
>
> "Q. Your judgment it was necessary to hold that land as a protection to the range of the Spanish Ranch?
>
> "A. It was.
>
> "Q. And if it was secured by John G. Taylor, or any other large livestock owner, likely to range his own cattle or sheep on this land, or to get access to this tract of land, it would seri-

ously impair the value of your range and your livestock?

"A. It would.

"Q. It was that the land should not go into the possession of anyone else who own sheep or cattle?

"A. Yes. That is the most valuable range land in one body that belongs to the Spanish Ranch division, and to have some other man acquire that holding in there would be very detrimental to the interest of the Spanish Ranch division.

"Q. Mr. Smith, do you regard the fulfillment of that contract as a necessary thing for the estate?

"A. I do."

The record also contains the testimony of Mr. Petrie, a livestock man of long, varied and very successful experience in the management of similar properties. Mr. Petrie says, concerning this purchase:

"Q. What would you say as to the advisability of that purchase, (the Lesher property) from your knowledge of the location of the Lesher land?

"A. I think the purchase was quite essential at the time, and the price paid was very reason

able for the grass and the security obtained.

"Q. You think the purchase of the land was advisable to preserve the range of the Spanish Ranch division?

"A. No question about it in my mind.

"Q. You think it should have been made?

"A. Absolutely.

"Q. And that the price paid was reasonable?

"A. I think so."

Mr. Petrie says further that the land was worth the purchase price for protection to the rest of the range.

And, explaining more in detail his reasons, he says:

"We will assume any stockman, having both sheep and cattle, or either sheep or cattle, located in that locality, would get a foothold and headquarters on this particular 1280 acres, he could use the adjoining range for a great many head of livestock that are now under our control, on account of having this property; and, in addition to that, it would help close up the gap from the west, that is, the entrance from the west into the main range on Tuscarora Mountain, from any tramp bands of sheep encroaching, not only on this land, but on land for several miles

through there; it would be a great protection in that particular, because there are two miles of fence that practically closed out bands from the west. It would also help to head out a great many range horses and wild horses that assembled throughout that country that eat a great deal of the feed that the cattle company has on this range.

"Q. That would be particularly bad at this time, in a season of shortage of feed?

"A. That is quite true, but it is very valuable at any time, no matter what the season."

And in answer to counsel on cross-examination, Mr. Petrie says:

"Q. If you were the owner of the Spanish Ranch without that property, the Lesher property included within it, and were in a position where you had to sell it between two and four months from today, would you recommend, as a matter of business operating policy, purchasing the Lesher property at $10,000.00?

"A. Yes, sir. I would. I would like to bring that in my statement before, I overlooked it.

"Q. In other words, you think the purchase price of the property, the value of the property, would be enhanced?

"A. It has more than $10,000.00 value. I mean to bring that in; I think it adds more than the purchase price to the whole value of the property."

Furthermore, the Lesher contract met with the entire approval of Mr. Moffat, the President of the Union Land & Cattle Company, and whose knowledge of the company's affairs and business was more intimate than that of any other person. Mr. Moffat says:

> "I think the purchase of the Lesher property was advisable. It was a benefit to the Spanish division, because it is the key to that particular part of the range, and, on account of its location, it protects the range of the Spanish division."

Another significant feature of Mr. Moffat's testimony is his opinion as to the reasonableness of the price and the value of the land **on re-sale.** He says:

> "Q. What would you say as to its value now, Mr. Moffat?
>
> "A. Well, I suppose it ought to be worth the same now as then.
>
> "Q. You think it could be sold?
>
> "A. I think so.
>
> "Q. Have you any reason to base that opinion on?
>
> "A. I think if the company wants to dispose of it, I could find a party who would buy it at what it cost the company."

This was the testimony which was before the

United States District Court at the time it made the orders complained of, and we are thus brought to a consideration of the law which governs and controls in such a situation.

We do not believe it can be seriously urged that the District Court was without jurisdiction to proceed as it did, and it seems clear that the making or withholding of such orders was within the discretion of the court charged with the responsibility of this receivership. As to this, we deem a citation of authorities to be wholly unnecessary. If this premise be correct, then the inquiry should be limited to a consideration of the function of this Court, and the rules which govern it in the exercise of its appellate jurisdiction in the instant case. The rule is well established that this Court will not undertake to substitute its judgment for the judgment of the District Court, or undertake to decide whether the Lesher purchase was, or was not, good business, but it will only determine whether, in making the orders complained of, the United States District Court abused its discretion.

The process of reasoning, by which this conclusion is reached ,seems logical and consistent. The District Court had jurisdiction to make the orders. In making them, it necessarily exercised judicial discretion, and was within its rights in so doing,—unless such discretion was abused. So that, the question before

this court is: Did the District Court abuse its discretion?

LIMITS OF APPELLATE JURISDICTION IN SUCH CASES.

The authorities, so far as we have examined them, are practically uniform.

Mr. Tardy, in his edition of Smith on Receivers, says:

> "Where the order appealed from is one within the discretion of the court, it is not subject to review unless the court has abused its discretion. This rule is frequently applied in the case of conflicting evidence.
>
> "Interlocutory orders appointing receivers and issuing injunctions generally rest in the sound judicial discretion of the court of original jurisdiction guided by the principles and rules of equity jurisprudence and when the court has not departed therefrom its orders may not be reversed without clear proof of an abuse of its discretion.
>
> "Orders of the court made in the course of the administration, such as orders authorizing the compromise of claims of the receivership, giving the receiver instructions in respect to the receivership or refusing to punish for contempt one who violates its orders are all of such a discretionary character as not to be reviewable except in the case of a clear abuse of judicial discretion.

"An appellate court in reviewing the discretion of a trial court in approving or rejecting an offer or purchase of the receivership property applies the same general principles as in the review of an order refusing or granting a temporary injunction. The right to exercise a sound discretion is in the trial court and not in the appellate court."

Vol. II, Tardy's Smith on Receivers, Second Edition, 1819, Pages 2174, 2174, 2177.

The Circuit Court of Appeals for the Third Circuit, in **Stokes vs. Williams**, 226 Fed. 148, 156, says:

"But the acceptance or rejection of the offer, and the making or withholding an order of sale, were matters wholly within the discretion of the court. Being matters within the discretion of the court, the question on appeal is not whether this court would have made the same order, but whether the District Court, in making the order, abused its discretion. In treating this question, we conceive we are controlled by the same principle that applies in a case where an appellate court is asked to review and reverse the judgment of a trial court in granting or refusing a temporary injunction. In both instances, the right to exercise a sound judicial discretion is vested in the trial court, and not in the appellate court. It is to the discretion of the trial court and not to the appellate court, that the law has intrusted the power in one instance to order a sale as in the other to grant or dissolve an injunction, and the only question for an appellate court is. Does the proof clearly establish an abuse of that discretion by the trial court?"

The Circuit Court of Appeals for the Eighth Circuit, in **American Grain Separator Co.** vs **Twin City Separator Co.**, 202 Fed., 202, at Page 206, says:

> "The granting or dissolution of an interlocutory injunction rests in the sound judicial discretion of the court of original jurisdiction, and, where that court has not departed from the rules and principles of equity established for its guidance, its orders in this regard may not be reversed by the appellate court without clear proof that it abused its discretion.
>
> The question is not whether or not the appellate court would have made or would make the order. It is to the discretion of the trial court, not to that of the appellate court, that the law has intrusted the power to grant or dissolve such an injunction, and the question here is: Does the proof clearly establish an abuse of that discretion by the court below? Fireball Gas Tank & Illuminating Co. v. Commercial Acetlyene Co. (C. C. A.) 198 Fed. 650, 653; Massie v. Buck, 128 Fed, 27, 31, 62 C. C. A. 535, 539; Love v. Atchison T. & S. F. Ry. Co. 185 Fed. 321, 330, 107 C. C. A. 403; High on Injunctions (4th Ed.) Sec. 1696; Higginson v. Chicago, B. & Q. R. R. Co., 102 Fed. 197, 199, 42 C. C. A. 254, 256; Interurban Ry. & Terminal Co. v. Westinghouse E. & Mfg. Co. 186 Fed. 166, 170, 108 C. C. A. 198, 302; Kerr v. City of New Orleans, 61 C. C. A. 450, 454, 126 Fed. 920, 924; Thompson v. Nelson, 18 C. C. A. 137, 138, 71 Fed. 339, 340; Societe Anonyme Du Filtre Chamberland Sys. Pasteur v. Allen, 33 C. C. A. 282, 285, 90 Fed. 815, 818; Murray v. Bender, 48 C. C. A. 555, 559, 109 Fed. 585, 589; U. S. Gramophone Co. v. Seaman, 51 C. C. A. 419, 423, 113 Fed. 745, 749."

And the same rule was but recently announced by this Court in the case of **Wilson & Co.** vs. **The Best Foods Incorporated,** 300 Fed. 484, 486.

This order, being within the discretion of the court, stands upon the same footing as other orders that are discretionary, and they will not be disturbed on appeal, except for an abuse of such discretion.

> **Stuart** vs. **Boulware,** 133 U. S. 78, 36 Fed. 568;
> **Trustees** vs. **Greenough,** 105 U. S. 527, 537.

These authorities might be multiplied indefinitely, but the question here is: Was there an abuse of discretion, which brings us to the further inquiry.

WHAT IS AN ABUSE OF DISCRETION?

Your attention is respectfully invited to the following definition of this rather vague and intangible expression:

> "A discretion exercised to an end or purpose not justified by, and clearly against, reason and evidence; a clearly erroneous conclusion and judgment—one that is clearly against the logic and effect of such facts are are presented in support of the application, or against the reasonable and probable deductions to be drawn from the facts disclosed upon the hearing; an error of judicial discretion; a use of discretion contrary to established usage.
>
> 1 **Corpus Juris,** 372, 373.

It seems to us that the definition to be applied here is that found in **Root** vs. **Bingham,** 128 N. W. 132, where it is held that judicial discretion is abused only when it may be said that it is exercised **on grounds for reasons clearly untenable, or to an extent clearly unreasonable.**

The matter here presented for consideration is not that the judgment of the District Court was mistaken, nor that the conclusion reached was wrong. It is not ,even, that this court might, under the circumstances of the case, have arrived at a different result, or made a different order. These factors are entirely aside from the issue. We are interested in determining whether the order of Judge Farrington **was clearly untenable and carried to an extent that was clearly unreasonable.** Unless this court can so hold, the appeal cannot be maintained.

It has been said in such a contingency:

> "It should be a very marked breach of discretion to justify our interference."
>
> **Gay vs. Hudson River E. P. Co.,** 173 Fed.
>
> "It is a universally recognized rule that, in the absence of a clear abuse of discretion, operating to the complaining party's prejudice, matters within the discretion of the trial court are not reviewable on appeal."
>
> 4 **Corpus Juris,** Sec. 2753, P. 796.

If this be the true rule, as we contend it is, how can it be held that the order here complained of was an abuse of the discretion of the District Court?

A. The land was deemed necessary for the protection of the range tributary to the Spanish Ranch.

B. Its purchase was sought by a competitive company, whose purpose was to use it as a base from which to invade the range then being used by the livestock of the Union Land & Cattle Company.

C. It was the last range which the Spanish Ranch had.

D. The Lesher land lay right in the heart of the Spanish Ranch property. It was necessary and useful for the operation of that ranch.

E. The land was worth the price paid for it.

F. It can be sold for that price now.

G. Had the $4,000.00 not been paid, it would have meant the loss of the $6,000.00 which had already been paid for it; this loss would have been absolute.

There was no abuse of discretion, under these cir-

cumstances, in ordering the payment to be made. We think further argument is unnecessary and would be an imposition upon this court.

The sole question which remains to be considered is whether the policy of liquidation introduced a factor into this transaction which made the purchase improper to a degree which amounted to an abuse of discretion. We think not.

The property of the Union Land & Cattle Company was operated as a going concern by the Receiver at the request, and with the full concurrence, of the creditors from the time of the Receiver's appointment, on July 28, 1920, to and until the 23d day of May, 1923. On this date, the first objection was made by one creditor, in the form of a petition by the First Federal Trust Company for an order for the delivery to it of all the lands embraced in its mortgage. This was the first notice of any objection by any creditor to the continued operation of the company's business by the Receiver.

The Lesher property had been leased by the Receiver and used by the Receiver under the lease prior to the contract of purchase, but it must be kept in mind that this contract was executed **on June 23, 1922.**

The property had been found to be useful and

valuable by the Receiver, and, at the time objection was made to the purchase, approximately $6,000.00 had been paid upon the total purchase price of $10,000.00. Stated in another way, and from the view-point of these objecting creditors, Judge Farrington was asked to refuse the Receiver permission to complete his contract, which would immediately have resulted in forfeiting:

A. 1280 acres of land;

B. $6,000.00 theretofore paid upon the land;

C. Protection to the range of the entire Spanish Ranch Division, at a time of an acute shortage of feed;

D. The use of the ranch as a base for the utilization of the range lands;

E. It would have resulted, also, in the additional shortening of the available feed supply for the cattle of the Spanish Ranch.

F. That key position would have passed into the hands of competitive interests, who would immediately utilize it for the grazing of their own livestock,—all to effect a nominal saving of $4,000.00.

It seems to us that, had Judge Farrington acceded to the demands of this particular group of creditors, such action could have been viewed only as a clear abuse of discretion, contrary to the interest of every

creditor, and detrimental to the receivership estate.

There are two considerations which seem to us to be decisive of this entire controversy:

1. The Lesher property itself, according to the testimony which we have quoted, is intrinsically worth the entire amount paid for it, and can at any time be sold for that sum, independently of the Spanish Ranch itself.

Under these circumstances, it would have been an act of folly to have relinquished the ranch when sixty per cent of the purchase price had already been paid.

2. The Lesher property, in addition to its intrinsic worth, occupies a key position with reference to the only valuable range land used in connection with the Spanish Ranch.

One of the most obvious factors in the sale value of the Spanish Ranch, or any other ranch property, is the condition, size, character and availability of the range which is tributary to such ranch. This is one of the first inquiries which any prospective purchaser will make. The value of the ranch itself is dependent upon the range which may be used in connection therewith. It seems inevitably to follow that, if a certain piece of property occupies an im-

portant key position with regard to the operation of a ranch, it occupies the same key position with regard to the sale of the ranch.

The purchase of the Lesher Ranch is as essential to the sale value of the Spanish Ranch Division, as it has been to the operating value of that property. The policy of liquidation did not introduce any new element into this situation, which affected the propriety of the Lesher purchase.

REPLY TO BRIEF FOR APPELLANTS.

. . The entire argument for the appellants may be reduced to the following propositions, neither of which is tenable. . It is claimed:

FIRST: That the order of Judge Farrington should be overruled, because it contravenes the mandate of this court in the former appeals.

It is not clear from counsel's discussion of this proposition what mandate, or what portion of any mandate, was violated by the order to complete the purchase of the Lesher ranch, but it may be assumed that reference is made to the policy of liquidation ordered by this court, and that the expenditure here involved is in some way inconsistent with that policy.

The answer to this contention is given by the facts

concerning the purchase, and the reasons which induced it.

The contract was made **prior** to the failure of the creditors' agreement for re-organization, and at a time when the property was operated as a going concern, with the consent of all the creditors.

But, even more important than this, the purchase of this property was made for the protection of the range upon which the Spanish Ranch was dependent, and was merely a measure of insurance. The Receiver and the District Court believed that, if this ranch fell into the hands of certain competitive interests, the Spanish Ranch would suffer, its sale value would be endangered, and the equity of the creditors in that property would be impaired. The situation before the District Court may be illustrated by the testimony submitted to Judge Farrington on this very point. Mr. Petrie testified as follows:

> "If I were the owner of the Spanish Ranch, without that property, the Lesher property included within it, and were in a position where I had to sell it between two and four months from today, I would recommend, as a matter of business operating policy, purchasing the Lesher property at $10,000. I would like to bring that in my statement before; I overlooked it. The property has more than $10,000 value. I meant to bring that in; I think it adds more

than the purchase price to the whole value of the property."

Pages 49, 50 and 51 Transcript of Record, upon appeal from the U. S. District Court for the District of Nevada.

And there was no testimony to the contrary. Every witness agreed to this.

It seems to us that such a purchase was just as necessary to preserve the Spanish Ranch range, and, therefore, the sale value of the Spanish Ranch itself, as policies of insurance would be necessary, even during a period of liquidation, to protect the buildings on the property of the Union Land & Cattle Company. It was not a matter of speculation, but a question of preservation, and, certainly, it could not be held to be an abuse of discretion to secure this protection.

This court, in the former appeals, enjoined a policy of retrenchment, as distinguished from a policy of expansion, but it did not directly or indirectly suggest that the Receiver, or the District Court, should neglect obvious measures of protection to the estate in their care.

Nor did this court ever interpose its objection to the performance of contracts for the benefit of the estate which had been made prior to any disagree-

ment among the creditors. If the contention of counsel be now carried to its logical conclusion, it would seem that the opinion of this court favoring a policy of liquidation, required the Receiver to immediately abrogate and cancel every contract which had theretofore been made, and, certainly, this court had no such intention, and gave no such direction. It is significant that, up to the time of the last payment of the purchase price of the property, although they then had knowledge of the facts, the only objection which was made by these seven creditors was that the Receiver had not filed a formal petition in the District Court. As counsel say, at Page 8 of their brief:

> "The July, 1923, Account was not heard until February, 1924, at which time, upon the objection of these appellants, the court refused to allow the item, because no formal application for authorization of the Receiver to purchase the Lesher property had been made."

These very creditors had received the benefits of the Lesher Ranch purchase ever since 1922. It had been used to protect the grazing of 4,000 or 4,500 cattle, a measure immediately for the especial benefit of the creditors, and it seems to us to come with ill grace to now object to such a purchase, after receiving all the benefits it could offer.

It is impossible to scrutinize the records in this

court without coming to the inevitable conclusion that these seven creditors, a minority in number and amount, have, at every turn, and in every way in their power, sought to embarrass this receivership, and have impeded its work, and frustrated its purposes, in order to impose their will upon it. These are the only objecting creditors, and never from the beginning have they offered a single constructive suggestion, nor given helpful cooperation in working out the problems of the receivership.

SECOND: The order of the District Court, it is contended, should be reversed because the land purchased became subject to the lien of the deed of trust, and was, therefore, withdrawn from the assets available for the general creditors.

This objection does not present the whole case. It ignores the basic factor that the general creditors are vitally interested in the sale value of the Spanish Ranch, as much so, in fact, as the holders of the bonds. The mortgaged indebtedness has been reduced from $1,200,000.00 to $720,000.00 and the value of the equity of the unsecured creditors in these lands has been proportionately increased. The impairment of the range tributary to the Spanish ranch, by reducing the sale value of that property, would likewise reduce the value of the creditors' equity in the lands, and, therefore, the purchase of the Lesher

Ranch, if the reasons inducing it were justified, was directly for the benefit of the general or unsecured creditors. If these lands which were purchased appreciated the value of the Spanish Ranch, they likewise increased the value of the creditors' equity in that property.

But, aside from this, the fact remains that large herds of cattle, which were assets directly applicable to the discharge of the unsecured creditors' claims, were grazed, fattened, prepared for market, and cared for on these lands, and on the range tributary to them, and it was solely for the benefit of these cattle, which were the assets of the unsecured creditors, that the lands were purchased. In the light of these facts, it seems unimportant whether or not the Lesher Ranch became impressed with the lien of the deed of trust.

There are certain statements contained in the brief for Appellants which are so easily susceptible to misunderstanding and which are so likely to mislead the court, that we think reference must be made to them.

It is stated that the receivership has been conducted at a loss. This statement has been so frequently made that further denial ought to be unnecessary. The Receivership has not been conducted at a loss. On the contrary, it has not only paid its

own way, but the principal indebtedness has been constantly reduced. What counsel meant, and what they should in frankness have stated to the court, if they did not desire to mislead it, was that no interest has been paid on the unsecured indebtedness, but the Receiver has paid approximately $650,000.00, or more, in principal and interest on the secured indebtedness, and there has not been any increase whatever in the principal indebtedness of the company.

Counsel further state that it has been impossible to sell the lands, or any of them, of the Union Land & Cattle Company. The facts are that the "H. C." Division has been sold, and in addition to this, the Ione Ranch has also been sold for $505,000.00 and the Receiver has under consideration inquiries for the sale of the Spanish Ranch.

Counsel also refer to "the Nevada creditors." The purpose of this reference is entirely obvious, the idea evidently being to convey to this court an impression that efforts are being made to conserve the interests of "the Nevada creditors." The facts are that there are practically no Nevada creditors but that approximately sixty per cent, or more, of what counsel term "the Nevada creditors," are either residents of California or states other than Nevada.

Counsel have so frequently and steadily made statements of the nature of those above mentioned,

in spite of the facts, that we take this occasion again to put the facts before this court.

In conclusion, we cannot do better than to again refer to the reasons which induced the District Court to authorize the completion of the purchase of this ranch.

Judge Farrington says:

> "The purchase of the Lesher land does not at first view seem like liquidation, but on careful consideration it appears to me that its acquisition is not only vital, but that it will facilitate rather than delay sale of the Spanish Ranch. In itself it is well worth the money asked. It is in the mouuntains and is covered with a large amount of feed; this, wth its elevation makes it valuable as summer range, and especially so in a dry year. Several hundred steers can be fattened thereon each season. It possesses a singular strategic value due to its location in the heart of a large and valuable range used and claimed in connection with the Spanish Ranch. An independent owner of the tract can graze sheep over the surrounding range in such manner as to take much of its use and value away from those who may be operating the Spanish Ranch. Incomplete control of the range, if a fact, will be given much weight by any one contemplating purchase of this portion of the property. The receiver was therefore ordered to complete the purchase of the Lesher land."

(Tr. pp. 12-13.)

Counsel suggest, in an attempt to waive aside the force and logic of Judge Farrington's reasoning, that he advances merely "reasons of expediency." A moment's consideration will, we think, show this court that the unsecured creditors are interested chiefly in realizing the best price possible from the sale of the livestock and personal property, and also, in such a conservation of the real estate as to leave an equity value to be utilized for the satisfaction of the unsecured claims. The Lesher Ranch purchase accomplished all of these purposes, and it was with these purposes in view that the District Court made the order from which the appeal is taken. That order should be affirmed.

Very respectfully submitted,

S. W. BELFORD,
GEO. S. BROWN,
J. W. DORSEY
W. E. CASHMAN
Attorneys for Appellees.